

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-7359-98
WTDerick

date: December 3, 1999

to: Chief, Examination Division, Illinois District
Attn: James Jezierski

from: District Counsel, Illinois District

subject: [REDACTED]
Proper Name for Taxpayer After Liquidation/Merger

In your facsimile dated November 9, you asked how to identify [REDACTED] in a substitute Form 945, Annual Return of Withheld Federal Income Tax. For the reason briefly discussed below, the name should appear on the return as follows:

[REDACTED] (EIN [REDACTED]), as successor
in interest by merger of [REDACTED]
[REDACTED] (EIN [REDACTED])

According to your facsimile, [REDACTED]
[REDACTED] and [REDACTED] were incorporated in
[REDACTED]. [REDACTED] owned all shares of [REDACTED]
[REDACTED] stock. On [REDACTED], [REDACTED], [REDACTED]
merged into [REDACTED] under § 253 of the Delaware General
Corporation Law. [REDACTED] liquidated under I.R.C. §
332.

For [REDACTED] and [REDACTED], [REDACTED] failed to file a
Form 945, Annual Return of Withheld Federal Income Tax. You plan
to prepare a [REDACTED] and [REDACTED] substitute for return. What name
should appear on the return?


Delaware law controls here. [REDACTED] merged
into [REDACTED] under § 253 of the Delaware General Corporation
Law. For mergers under § 253, as well as other types of mergers,
Delaware law gives the surviving corporation all the rights,
privileges, and powers of the corporation not surviving the
merger. See Del. Code Ann. tit. 8, § 259. Thus, [REDACTED],
the surviving corporation, should act for [REDACTED],
the non-surviving corporation.

We have not asked the National Office to review our advice
in advance, but we will be sending a copy of this memorandum to
the National Office for coordination purposes. If the National

Office later requires a change, we will notify you by a supplemental memorandum. If you would like to discuss this, please call me at (312) 886-9225 extension 318.

RICHARD A. WITKOWSKI
District Counsel

By:


WILLIAM T. Derick
Act. Assist. Dist. Counsel

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